

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-11178-RWZ

LAW OFFICES OF JEFFREY S. GLASSMAN, LLC

v.

IDEARC MEDIA CORP.,  
now known as SuperMedia LLC

ORDER  
April 29, 2011

ZOBEL, D.J.

Plaintiff has moved for clarification of the court's denial of its motion to dismiss defendant's counterclaim. (Docket # 32.)

The motion for clarification allowed. But the motion to dismiss is still denied.

First, the record is not unequivocal as to the facts underlying the assertion of lack of prosecution. The delay with respect to both plaintiff's claim and defendant's counterclaim started with discovery disputes and requests for extensions of time and was exacerbated by the bankruptcy proceeding filed on March 31, 2009. Although defendant declined to seek a lift of the automatic stay, nothing in the record suggests that the bankruptcy court would have granted it. That court confirmed defendant's First Amended Joint Plan of Reorganization on December 22, 2009, which left intact the claims of both parties in this case.

Second, plaintiff moved at some point in 2010 to withdraw its claims from the bankruptcy court, which allowed the motion on September 10, 2010. Defendant

followed suit with a similar motion in late January 2011, some four and a half months later. Defendant's counsel acknowledges the delay and explains it as the result of an unintentional lack of communication with its newly-restructured client. If there has been a delay in prosecution of the counterclaim it is this last described action by defendant, and that delay is not of a magnitude to require, let alone compel, dismissal of the counterclaim.

Thus, the motion for clarification (Docket # 32) is allowed, but the court confirms the denial of the motion to dismiss the counterclaim. Plaintiff's concurrent motion for a stay pending decision on the motion for clarification (Docket # 33) is denied as moot.

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April 29, 2011  
DATE

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/s/Rya W. Zobel  
RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE